

SHB ORDER NOT
APPEALED, BUT MATTER
REMANDED TO THURSTON
CO. BY THURS. SUP. CT.
FOR PLAT APPROVAL
SUP CT. DECISION
APPEALED.

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT DENIED BY
THURSTON COUNTY TO LAKE LAWRENCE,
INC.

STATE OF WASHINGTON, DEPARTMENT
OF NATURAL RESOURCES and LAKE
LAWRENCE, INC.,

Appellants,

v.

THURSTON COUNTY,

Respondent.

SHB No. 77-37

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of the denial of an application for a shoreline substantial development permit, came before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Robert E. Beaty, Robert F. Hintz, and Chris Smith on February 14, 15, 16 and 17, 1978 in Lacey. Board member Robert F. Hintz, being unable to attend the hearing on February 17, has read the transcript for that day.

Appellant Lake Lawrence, Inc. appeared through its attorney,

1 Philip P. Malone; appellant, State Department of Natural Resources
2 (hereinafter "DNR") appeared through J. Lawrence Coniff, Jr., Assistant
3 Attorney General; respondent Thurston County, was represented by
4 Alexander W. Mackie, Deputy Prosecuting Attorney. David Akana presided.

5 Appellant DNR brought a motion to remand the matter to respondent
6 to reconsider the decision and to render a "final decision" in
7 accordance with the requirements of the State Administrative Procedures
8 Act ("APA"), chapter 34.04 RCW. Appellant Lake Lawrence, Inc. joined
9 in the motion. We conclude that the motions should be denied. The
10 APA applies only to "state" agencies. See League of Women Voters v.
11 King County, SHB No. 13; Brachvogel v. Mason County, SHB Nos. 45,
12 140, 189. Administration of the Shoreline Management Act is vested
13 in local government. RCW 90.58.050. Compliance with "state" policy
14 is insured by the supportive and review capacity of the State
15 Department of Ecology. Id. Appellants also argue that the County's
16 decision was simply an unreasoned statement, whereas a reasoned final
17 order was required. It may be that findings of fact and conclusions
18 or reasons will be required for permit proceedings in the future.
19 See Parkridge v. Seattle, 89 Wn.2d 454 (1978). But such requirement is
20 not retroactively required in the instant matter. In any event, appellant
21 could have conducted discovery or brought an appropriate motion, which
22 they have not done. WAC 461-08-010. And since this Board reviews
23 each appeal de novo, appellants are not materially prejudiced. The
24 motion is therefore denied.

25 Respondent moved that the appeals be dismissed on the ground that
26 the denial of the proposed plat by the County on grounds under

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 chapter 58.17 RCW renders "moot" the request for the substantial
2 development permit to implement the plat. The motion should be denied.
3 While the County may have concerns for the proposed plats under chapter
4 58.17 RCW, it remains that a shoreline substantial development permit
5 was denied on a particular proposal. This Board can review such
6 denial within the context of the Shoreline Management Act. RCW 90.58.180(1)
7 Other requirements and approvals for the proposal must nonetheless be
8 met before the proposal can proceed. RCW 90.58.360. The motion is
9 therefore denied.

10 Counsel made opening statements; the Board viewed the site;
11 witnesses were sworn and testified.

12 Having heard the testimony, having examined the exhibits, and
13 having considered the contentions of the parties, the Shorelines Hearings
14 Board makes these

15 FINDINGS OF FACT

16 I

17 Lake Lawrence is a small (approximately 339 acres in area),
18 relatively shallow (up to 30 feet deep) lake located south of the town
19 of Yelm in Thurston County. The State of Washington, Department of
20 Natural Resources owns slightly over 14 acres of a shoreline area on
21 Lake Lawrence known as Wood Point (hereinafter referred to as the
22 "site"). DNR also owns an offshore island, the bed of the lake and the
23 property immediately west of the site, on which the Department of Game has
24 a public boat ramp.

25 II

26 The site is presently covered with second-growth timber and dense

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 vegetation. Some larger "emergent" trees, scattered over the property,
2 rise above the "canopy" formed by the smaller trees. The underbrush
3 along the shoreline provides good cover and habitat for small animals
4 and birds.

5 III

6 In August of 1976, the State Department of Ecology approved the
7 shoreline master program for the Thurston County region. Therein, all
8 of the shorelands of Lake Lawrence were designated in either rural or
9 conservancy environments.¹

10
11 1. The Shoreline Master Program (pp. 11, 12) for the Thurston
12 Region describes the environments as follows:

13 2. Conservancy Environment

14 Definition: The "Conservancy Environment" designates
15 shoreline areas for the protection, conservation,
16 and management of existing valuable natural resources and
17 historic and cultural areas. This environment is
18 characterized by low-intensity land use and moderate-
19 intensity water use with moderate to little visual
20 evidence of permanent structures and occupancy. Sustained
21 management of the pastoral, aquatic and forest resources,
22 as well as rigidly controlled utilization of nonrenewable
23 and other nonmineral resources which do not result in long-
24 term irreversible impacts on the natural character of the
25 environment are permitted. Intensity of recreation and
26 public access may be limited by the capacity of the
27 environment for sustained recreational use.

28 3. Rural Environment

29 Definition: The "Rural Environment" designates shoreline
30 areas in which land will be protected from
31 high-density urban expansion and may function as a buffer
32 between urban areas and the shorelines proper. This
33 environment is characterized by low intensive land use
34 and moderate to intensive water use. Residential

1 All of the instant site was designated "rural" in the shoreline
2 master program. Shorelands lying west of the site have been designated as
3 rural; shorelands lying east of the site have been designated conservancy.
4 Much of the lake shore is platted for residential development.

5 IV

6 Lake Lawrence, Inc., an appellant herein, proposes to develop the
7 site into single-family residences. In reliance upon the rural use
8 designation, Lake Lawrence, Inc. leased the site from DNR for a term
9 of fifty-five years beginning on September 1, 1976. By separate agreement,
10 it also leased from DNR certain second class shorelands adjacent to the
11 uplands.

12 V

13 On January 12, 1977, Lake Lawrence, Inc. applied to the Board of
14 Thurston County Commissioners for a preliminary plat and shoreline permit
15 to develop the site into twenty-seven residential home sites. The
16 proposal was amended several times subsequently. A draft environmental
17 impact statement (EIS) was prepared, public hearings were held, comments
18 received, and a final EIS was completed and filed with the Thurston
19 County Planning Department in May of 1977. The planning department
20

21 development does not exceed two dwellings per acre.
22 Visual impact is variable with a moderate portion of
23 the environment dominated by structures or impermeable
24 surfaces. Intensive cultivation and development of the
25 renewable soils, aquatic and forest resources, as well
as limited utilization of nonrenewable mineral resources
is permitted. Recreational activities and public access to
the shoreline are encouraged to the extent compatible
with other rural uses and activities designated for
this environment.

1 recommended approval of the revised proposal.

2 After the May 27, 1977 staff report to the Land Use Committee and
3 a Land Use Committee meeting by the Planning Commission, a site visit
4 was arranged for all parties. The visit was held on July 1, 1977 and
5 three eagles were observed on the site consisting of two adults and
6 an eaglet. After the trip and discussions with the State Department of
7 Game, the Thurston County Planning staff changed its report and
8 recommended that the development proposal be denied. The staff also
9 recommended that the shoreline designation be reconsidered.

10 On July 13, 1977, the Thurston County Planning Commission met to
11 consider the applicant's revised proposal and the staff recommendations.
12 The Planning Commission lacked a quorum to render a decision and forwarded
13 the proposal to the Board of County Commissioners with no recommendation

14 The Board of County Commissioners held two public hearings on the
15 proposal, on August 17, 1977 and September 8, 1977. On September 8,
16 1977, the applicant submitted a proposal revising the buffer zone
17 along the shoreline for additional protection of wildlife habitat.
18 The revisions were made in response to environmental concerns disclosed
19 in the EIS and particularly as to the trees which had been identified as
20 an "eagle habitat" on the site. After the public hearing, the Board of
21 County Commissioners called for additional written comments from the
22 developer, the public and staff and on September 28, 1977, denied
23 both the application for preliminary plat and shoreline permit.
24 That decision was memorialized by a letter dated September 30, 1977
25 addressed to the Director of the Thurston County Planning Department,
26 signed by the ex officio clerk of the County Commissioners. The decision,

27 FINAL FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 which did not include consideration of the request for a conditional
2 use and/or variance permit for a community dock, was appealed to this
3 Board

4 VI

5 The proposed substantial development in its last configuration
6 consists of creating 15 "waterfront" lots and ten upland lots. (See
7 exhibit A-8) Three of the waterfront lots will be set aside for an
8 "eagle preserve." A 1,000-foot long private road with a 60-foot wide right
9 of way separates the upland and the waterfront lots. Each lot would be
10 served by an individual septic system. Other features of the project
11 include common driveways to adjacent pairs of lots, utility lines along
12 boundary lines and to the community dock, common areas for picnic and
walking areas and a water well, fence protection along the southern
14 boundary, and an 88-foot long private community pier with eight 24-foot
15 long fingers located on second class shorelands. Drainage and pedestrain
16 access from the development is provided through the shoreland towards the
17 lake. The development is nearly surrounded by a greenbelt area which is
18 75-feet wide at the shoreline and 50-feet wide at other boundaries except
19 adjacent to the existing public boat ramp located on the western boundary.
20 Additionally, there would be a 50-foot building setback from the 75-foot
21 shoreline buffer.

22 Protective covenants and restrictions are intended which would
23 control the removal of trees and preserve the greenbelt buffer and
24 marsh areas. Hunting would be prohibited. Certain other covenants
25 and restrictions are required by the DNR lease.

Lake Lawrence, Inc.'s upland lease with DNR provides for no

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 residential construction in the buffer zone, requires written consent
2 prior to removal of trees in the greenbelt buffer area, restricts
3 clearance of vegetation and fallen trees therein except for a walking
4 path or for encouragement of natural growth of trees and vegetation and
5 permits the construction of fences and gates along the inland west and
6 south perimeter boundaries. The lease permits clearing of vegetation
7 and placement of picnic tables, benches, water and sanitary facilities
8 and outdoor cooking facilities in either the west or south buffer area
9 for the recreational use of lot owners.

10 VII

11 Bald eagles have long been observed both in undisturbed wooded
12 areas and on trees near residential structures at Lake Lawrence. Sightings
13 have occurred during winter and summer months, and even during portions
14 of the year when human activities extend to the lake for fishing and
15 recreational purposes.

16 At the instant site, bald eagles have been observed perched on
17 several preferred "emergent" trees. It is unlikely that bald eagles
18 have used the site for nesting. It is likely that bald eagles use
19 certain trees near the water on the site for perching while feeding
20 at the lake. However, the lake is not a primary or critical feeding
21 area. Such feeding areas are more likely found at the nearby
22 Deschutes River and Nisqually River where spawning salmon can be found.
23 At Lake Lawrence, eagle food sources include fish, which is stocked by
24 the Department of Game, and waterfowl.

25 VIII

26 There are two types of bald eagles. One type, the southern bald

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 eagle, is found south of the 40th parallel, and has been declared to
2 be an "endangered species." Such designation indicates that a species'
3 population is small or declining, or that their habitats are being
4 destroyed. The second type, the northern bald eagle, is found north of
5 the 40th parallel, and has recently been placed in "threatened" status,
6 which means threatened with "endangerment."

7 IX

8 The critical aspects of eagle habitat include nesting, winter
9 roosting and feeding areas. Although Lake Lawrence is not a primary
10 feeding area, it is nonetheless an "incidental" perching area for
11 eagles. Preservation of favored perching trees together with an adequate
12 surrounding buffer would be a proper requirement for the instant
13 development. Visual screening from ground activities is an important
14 part of such a buffer. Noise from normal human residential activities
15 are not ordinarily disturbing to some eagles. Human activities on the
16 water disturb the eagles the most. According to the scientific evidence,
17 including exhibits (R-1; R-4) and expert testimony, the setting aside of
18 three waterfront lots (lots 3, 4, and 5) and buffer area in the shoreline
19 for an "eagle preserve" provides adequate protection against significant
20 adverse effect to the eagles in this proposal.

21 X

22 Any Finding of Fact which should be deemed a Conclusion of Law
23 is hereby adopted as such.

24 From these Findings the Board makes these
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 The denial of appellant Lake Lawrence, Inc.'s application is
4 reviewed, after the adoption and approval of the applicable master
5 program, for consistency with the master program and the provisions
6 of the Shoreline Management Act. RCW 90.58.140(2)(b).

7 II

8 This Board reviews de novo the action of the County. E.g.
9 Brachvogel, et al. v. Mason County, SHB No. 140. The burden of
10 proving consistency with the Shoreline Management Act and the master
11 program herein is upon the appealing party. RCW 90.58.140(7). E.g.
12 Wallingford Community Council, et al. v. City of Seattle, SHB No. 203.

13 III

14 The proposed substantial development (without the community dock)
15 is consistent with the master program environment regulations for the
16 rural designation.²

17 The proposed substantial development (without the community dock)

18
19 2. The Rural Environment Regulations of the master program
20 (pp. 60 and 61) require developers to indicate how shoreline vegetation
21 and erosion will be controlled during construction. (See also paragraph
22 six of the master program, p. 28.) In this matter a vegetation and tree
23 buffer will remain along the shoreline. The regulations require
24 access and pathways upland from the ordinary high water mark to
25 be held for common use by residents of the development. The instant
26 development provides for such. Residential density limitations of
27 two dwelling units per acre (28 maximum allowed herein) are met by
the proposed development. (See also paragraphs eight and nine of the
master program, p. 28.) The 125 foot total setback (75 feet of which
is in common use) from the lake exceeds the 50-foot requirement of
the master program (See also paragraphs two, three and four of
the master program, p. 27.)

1 is consistent with the master program policies for regulation of use
2 activities for residential development provided that preservation of the
3 remaining vegetation along the waterfront in the natural buffer is made
4 a condition of a shoreline permit.

5 IV

6 The proposed substantial development (without the community dock)
7 is consistent with the general policy of the master program and the
8 provisions of chapter 90.58 RCW.

9 V

10 The propriety of the proposed community dock is not here addressed
11 inasmuch as the conditional use or variance permit required is not now
12 before this Board.

VI

14 A permit for the project, as described herein and when conditioned
15 as provided for in Conclusion of Law III, will be consistent with the
16 master program of Thurston County and the provisions of the Shoreline
17 Management Act.

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters the following
ORDER

The denial of a shoreline substantial development permit is reversed and the matter is remanded to Thurston County for further proceedings.

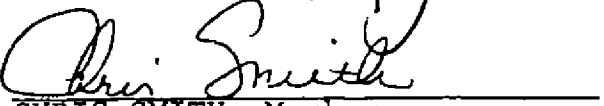
DATED this 23^d day of March, 1978.

SHORELINES HEARINGS BOARD


DAVE J. MOONEY, Chairman


ROBERT E. BEATY, Member


ROBERT F. HINTZ, Member


CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER